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IMPLEMENTATION OF THE INTERNATIONAL DRUG CONTROL TREATIES

Report on the meeting of the Expert Group to Consider the Mandate, Activities and Funding of a Working Group on Maritime Cooperation, held at Vienna from 15 to 18 November 1993

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INTRODUCTION

1. The Expert Group to Consider the Mandate, Activities and Funding of a Working Group on Maritime Cooperation met at Vienna from 15 to 18 November 1993, pursuant to Commission on Narcotic Drugs resolution 3 (XXXVI), entitled "Establishment of a working group on maritime cooperation to promote implementation of the articles of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 relating to illicit traffic by sea". In that resolution, the Commission decided in principle to establish, under the auspices of the United Nations International Drug Control Programme (UNDCP), as soon as possible following the thirty-seventh session of the Commission, "a working group on maritime cooperation to promote universal implementation of the relevant provisions of the 1988 Convention, or equivalent measures, in order to further enhance international cooperation".

2. In the same resolution, the Commission requested the Executive Director of UNDCP "to convene, within existing resource levels and prior to the thirty-seventh session of the Commission, a group of experts, selected with due regard to equitable geographical distribution, to examine the possible mandate, activities and funding of a working group on maritime cooperation".

3. Also in that resolution, the Commission requested the Executive Director, as well as the group of experts, "to take into account the need to establish a working group on maritime cooperation which would be comprised of appropriate government officials, in particular those concerned with law enforcement directed against illicit traffic by sea, which would reflect as closely as possible a geographical balance consistent with that of the membership of the Commission, and which would include representatives of appropriate bodies within the United Nations system and of other intergovernmental organizations".

4. In addition, in the same resolution, the Commission requested the Executive Director to prepare, on the basis of the conclusions of the group of experts, a report containing specific recommendations for the establishment of a working group on maritime cooperation, for submission to the Commission at its thirty-seventh session. Furthermore, the mandate of the working group on maritime cooperation would be to facilitate, inter alia:

(a) Development of a comprehensive set of principles to be considered by States adopting laws and policies to implement the provisions relating to illicit traffic by sea contained in the 1988 Convention, or equivalent measures;

(b) Preparation of specific recommendations, tailored where appropriate to the needs of especially vulnerable geographical regions, for the purpose of promoting greater cooperation in information-sharing and in carrying out law enforcement operations against illicit traffic by sea, in a manner consistent with the international law of the sea, with article 17 of the 1988 Convention, and with the applicable national law.

I. RECOMMENDATIONS

5. The Expert Group agreed that the working group on maritime cooperation:

(a) Should examine bilateral and regional agreements with a view to examining the principles and guidelines of such agreements or arrangements;

(b) Should examine and compile a list of barriers to international cooperation in maritime interdiction in territorial waters and beyond, in conformity with the international law of the sea;

(c) Should recommend ways to improve and facilitate international cooperation in combating illicit traffic by sea, considering the fact that there was broad scope for cooperation that went beyond the activity of boarding.

6. The Expert Group recommended that the working group should examine the following issues and recommendations with a view to enhancing maritime cooperation in combating illicit traffic by sea:

Exchange of information

1. Because the Expert Group considered that information collection and sharing were of paramount importance, it recommended that the working group should explore ways and means of improving information-sharing.

2. In view of the importance of the time element in boarding vessels outside territorial waters, the working group should explore the possibility of requesting the United Nations International Drug Control Programme to assist Governments in establishing or improving national decision-making mechanisms aimed at facilitating the expeditious response of their competent authorities to requests made pursuant to article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

3. Governments should improve and streamline channels for direct communication between competent authorities in order to facilitate and simplify the process of responding to requests made pursuant to article 17 of the 1988 Convention.

4. The working group should remind each State party to the 1988 Convention of its international obligation to appoint a competent authority, as required under article 17, paragraph 7, of that Convention, and to communicate the name of that authority to the Secretary-General.

5. All States should provide to the Executive Director of the United Nations International Drug Control Programme all relevant information on how they cooperate in accordance with article 17 of the 1988 Convention, as well as how they facilitate the rapid transmission and receipt of requests for cooperation pursuant to that article.

Technical assistance

6. The working group should consider the need to provide assistance to States in improving their interdiction capability, particularly through appropriate training.

7. The working group should consider the need for assistance to be provided to States by the United Nations International Drug Control Programme and donors in order to improve communication and to facilitate the exchange of information at the regional and international levels.

8. The working group should consider the development by the United Nations International Drug Control Programme of a programme of work related to the implementation of article 17 of the 1988 Convention that would give greater priority to combating illicit traffic by sea in the regional and subregional strategies of the United Nations International Drug Control Programme, thereby enhancing awareness among States of their obligation to combat illicit traffic by sea.

Legal issues

9. The working group should recommend ways of ensuring that States providing flags of convenience are meeting their international obligations in combating illicit traffic by sea, in conformity with article 17 of the 1988 Convention and with the international law of the sea.

10. The working group should consider ways and means of monitoring how States providing flags of convenience are meeting their obligations under article 17 of the 1988 Convention and under the international law of the sea.

11. Because several States do not have legislation to enable them to prosecute drug trafficking offences committed on vessels without nationality and, on the high seas, most States extend their jurisdiction to vessels flying their flags or to their nationals, the working group should be invited to examine the issue of drug trafficking by vessels without nationality to ensure prosecution of such offences.

12. The working group should reaffirm the responsibility of all flag States for their vessels, particularly when a State has boarded a vessel at the request of the flag State.

13. The working group should deal with the question of who should pay the cost of intervention and damages incurred by bona fide parties as a result of boarding and who should assess the legal consequences of such action and the cost incurred by a State intervening at the request of the flag State.

14. The working group should deal with the question of civil and penal responsibilities resulting from action by a State boarding a vessel outside its territorial waters.

Procedures for implementation

15. The working group should deal with the question of profile gathering, assessment, and sharing of information concerning vessels suspected of being engaged in illicit traffic, in order to facilitate the identification of such vessels.

16. The working group should deal with the question of ensuring closer cooperation among States in controlled delivery operations involving vessels under surveillance so that such operations are not disrupted.

17. The working group should deal with the question of involving commercial carriers, manning agencies, shipowners, and port authorities in combating illicit traffic, particularly through the exchange of information and preventive action.

18. The working group should agree on a preferred time-frame within which a flag State should process a request to board one of its vessels on the high seas.

19. The working group should deal with the question of developing a network of bilateral and regional agreements or arrangements to expedite the process of making decisions concerning intervention on vessels suspected of being engaged in illicit traffic.

20. The working group should examine the possibility of adopting guidelines for taking the action described in article 17, paragraph 4, of the 1988 Convention.

21. The working group should explore additional measures to enhance the implementation of article 17 of the 1988 Convention.

II. DISCUSSION

7. On behalf of the Executive Director of UNDCP, the Deputy Executive Director and Director of the Division for Treaty Implementation and Support Services opened the meeting. The Expert Group decided not to elect any officers and to conduct its business in an informal manner. The members of the Expert Group are listed in the annex.

8. The deliberations focused on the mandate of the working group, its organization of work, its membership, and a list of issues and recommendations for its consideration.

A. Mandate of the working group

9. The Expert Group took note of the mandate of the working group as set out in paragraph 3 of Commission resolution 3 (XXXVI). It agreed that, as the mandate of the working group would be to develop a comprehensive set of principles and to prepare specific recommendations to enhance the implementation of article 17 of the 1988 Convention, the activities and functioning of the working group could be along the lines of that of the Chemical Action Task Force or the Financial Action Task Force established by the heads of State or Government of the Group of Seven industrialized countries and the President of the Commission of the European Communities. The mandate of the working group was, in the view of the Expert Group, different from that of the committee of experts on the implementation of article 17 of the Council of Europe, which was drafting a regional agreement on the subject.

B. Scheduling of the sessions of the working group and funding

10. The Expert Group discussed the scheduling of the sessions of the working group. It suggested that, if established by the Commission at its thirty-seventh session, the working group should hold two sessions prior to the thirty-eighth session of the Commission.

11. The first session of the working group should last five working days. At its first session, which would be held in September 1994, the working group would have before it a report prepared by UNDCP on the status of international cooperation in implementing article 17 of the 1988 Convention. The report would be based on information provided by Governments in response to a questionnaire prepared by UNDCP.

12. The Expert Group agreed that the second session of the working group should be scheduled during a week preceding the thirty-eighth session of the Commission, if possible, during the week immediately before that session of the Commission.

13. The working group should present a report to the Commission at its thirty-eighth session. It should endeavour to fulfil its mandate prior to that session of the Commission.

14. The Expert Group suggested that the sessions of the working group should be funded from the regular budget of the United Nations and that they should be convened at a time when the costs could be absorbed by the Organization. Should extrabudgetary resources be forthcoming, they could be used to ensure the participation of developing countries, as appropriate.

C. Membership of the working group

15. As stipulated in Commission resolution 3 (XXXVI), the membership of the working group should be selected with due regard to equitable geographical distribution, along the lines of the membership of the Commission. The Expert Group suggested that the membership of the working group should cover the interests of maritime States, as well as the needs of States in especially vulnerable geographical regions. The Expert Group was of the opinion that the membership of the working group should be limited in order to ensure an efficient working environment. Thus, the Expert Group suggested that, to facilitate its effective operation, the working group should consist of delegations representing 15-25 States and that each delegation should be limited to three or four persons covering the interests and concerns of authorities responsible for operations, legal expertise and foreign affairs.

16. The Expert Group was not in favour of the working group constituting an open-ended intergovernmental expert group. In its view, all interested States should be provided an opportunity to contribute to the work of the working group through the Commission, to which the working group would present a report on its two sessions. The regional groups would decide which States from their regions would participate in the working group. Organizations with specific mandates in the maritime sector such as the International Maritime Organization and the Council of Europe (principally on account of the draft regional agreement on the implementation of article 17 of the 1988 Convention that is being prepared under its aegis) should be invited to participate as observers in the deliberations of the working group. In the view of the Expert Group, continuity should be maintained in the work of the working group and Governments should avoid sending different delegations to the sessions of the working group.

D. Issues for consideration by the working group

17. The Expert Group discussed the feasibility of drawing up a draft provisional agenda for the first session of the working group. It decided that, instead of preparing a draft provisional agenda, it would be preferable to list issues for consideration by the working group in developing a comprehensive set of principles and recommendations to be considered by States adopting laws and policies to counter illicit traffic, as stipulated in paragraph 3 of Commission resolution 3 (XXXVI).

18. The Expert Group agreed that the working group should examine a number of issues and should take into consideration a number of recommendations, which

are provided in chapter I above. The Expert Group emphasized that those issues and recommendations did not constitute an exhaustive list of the matters to be addressed by the working group.

19. The Expert Group suggested that the Commission should request UNDCP to collect, collate and analyse the status of international cooperation in drug interdiction in territorial waters and beyond on the basis of a questionnaire sent by UNDCP to all Governments. The analysis should also cover national experiences in implementing article 17 and related articles of the 1988 Convention. The Expert Group invited UNDCP to contact, on an informal basis, the competent authorities, to the extent possible, with a view to initiating the preparation, following the meeting of the Expert Group, of the report by UNDCP on the status of international cooperation in implementing article 17.

Annex

LIST OF PARTICIPANTS

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